ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-266
	)	
Rate Regulation	)	

COMMENTS OF BELL ATLANTIC

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January 27, 1993

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COMMENTS OF BELL ATLANTIC[1]

1. Introduction and Summary

As Congress found, the cable industry today is a mature, unregulated monopoly, providing low quality service at unreasonably high prices.[2] As a result, Congress directed the Commission to adopt rules to "protect[] subscribers" from rates that exceed those that would be charged "if such cable system were subject to effective competition,"[3] and to implement the 1992 Act in a manner to promote the development

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company, and New Jersey Bell Telephone Company.

[2] According to Congress, "without the presence of another multichannel video programming distributor, a cable system faces no local competition," and "[t]he result is undue market power for the cable operator...." Cable Television Consumer Protection and Competition Act of 1992, Sec. 2(a)(2) ("1992 Act").

[3] 47 U.S.C. § 543(b)(1).

of competition.[4] The Commission should comply with these directives by applying to cable companies -- in both their cable and telephone operations -- regulations that parallel those that apply to local telephone companies.

The telephone and cable industries, driven by technological change, are rapidly converging.[5] Both industries are deploying advanced fiber optic technologies capable of providing a full range of voice, data and video services,[6] and competition between the industries for communications services is rapidly increasing. In fact, the cable industry has already moved extensively into traditional

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[4] See, e.g., H.R. Rep. No. 628, 102d Cong., 2d Sess. at 44 ("House Report") ("steps must be taken to encourage the further development of robust competition in the video marketplace"); H. Conf. Rep. No. 862, 102d Cong., 2d Sess. at 93 (1992) ("Conf. Report") (directing the Commission to adopt rules to "encourage arrangements which promote the development of new technologies providing facilities-based competition to cable....").

[5] See, e.g., Dept. of Commerce, 1993 U.S. Industrial Outlook at 29-12 (Jan. 1993) ("The growing reliance on fiber by both the CATV and telecommunications industries is blurring the lines, and increasing the competition between them.").

[6] "The [NCTA] estimated that CATV operator's use of fiber optics has risen 400 percent since 1988 and will continue to increase by at least 25 percent annually through the 1990's. Industry plans call for spending $18 billion during the next 10 years to upgrade...." Id.; see also "Fiber and Compression To Boost TCI Spending $300 Million Per Year," Communications Daily at 1-2 (Jan. 13, 1993) (TCI to make "bidirectional" fiber systems available to 90 percent of subscribers within 4 years).

telephone services,[7] and has done so free of the regulatory restrictions that apply to telephone companies.

As the Commission itself has recognized, under these circumstances the 1992 Act should be implemented in a way to "create a measure of regulatory parity" between competitors.[8] This will promote the development of competition by permitting the market place to function free of one-sided regulatory burdens that artificially favor or handicap particular competitors. It will also avoid drawing arbitrary distinctions between the regulatory restrictions that apply to similarly situated competitors.

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[7] E.g., Fahri, "Time Warner Plans 2-Way Cable System," The Washington Post at F1 (Jan. 27, 1993) (announcing plans to build a cable system offering "telecommunications services"); Huber, et al., The Geodesic Network II: 1993 Report on Competition in the Telephone Industry at 2.53 -2.67 (1992) (cable now controls over 50 percent of competitive access provider revenues); Dawson, "In Teleport's Shadow," Cablevision at 31 (Sept. 21, 1992) (identifying cable operators' telephone ventures); Gilder, "Cable's Secret Weapon," Forbes at 80 (Apr. 13, 1992) ("The cable industry is now moving fast toward two-way capabilities..."); "Record CAB Attendance," Communications Daily at 3 (Apr. 8, 1992) (quoting a cable executive that cable service will soon be offered "free to households that would otherwise decline to subscribe in order to promote the sale of telephone and other services").

[8] See Implementation of the Cable TV Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, MM Dkt No. 92-259, NPRM at ¶ 42 (released Nov. 19, 1992).

2. The Commission Should Apply Price Cap Regulation To Basic Cable Rates After First Ensuring That Existing Rates Are Reasonable

The Commission should create a measure of regulatory parity in this proceeding by applying price cap regulations to cable which parallel those that it has already applied to telephone companies.[9]

In particular, the Commission's rules should include a "productivity factor" which requires annual rate decreases in real inflation-adjusted terms. The Commission imposed this requirement on telephone companies because, to the extent the deployment of new technologies, such as fiber optics, leads to lower costs, it permits improved productivity.[10] That reasoning applies equally to cable, since cable companies are

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[9] Under the Act, local franchising authorities that have been certified by the Commission are primarily responsible for implementing the Commission's rules governing basic cable rates. 47 U.S.C. § 543(a). Where a local franchise authority does not exercise its authority, however, the Commission itself must exercise jurisdiction to regulate basic rates. Id., § 543(a)(6). This requirement applies in all instances where no "franchising authority has qualified to exercise that jurisdiction," id., and not just in those instances where a local franchise authority affirmatively applies for certification and its application is disapproved or its certification is revoked, see NPRM at 11-12.

[10] Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6789-91, and Erratum, 5 FCC Rcd 7664 (1990) ("LEC Price Cap Order"), mod'd on recon., 6 FCC Rcd 2637 (1991), petitions for further recon. pending, appeal docketed, D.C. Public Service Comm'n v. FCC, No. 91-1279 (D.C. Cir. June 14, 1991).

deploying the same technology as telephone companies: In fact, cable claims to be installing fiber at nearly the same rate as all of the regional Bell operating companies combined.[11]

As the Commission found in the case of telephone companies, applying this price cap structure to cable will encourage improvements in productivity and efficiency, and promote deployment of advanced new technologies.[12] Price caps will also limit cable's incentive to cross-subsidize its unregulated services with revenues from its regulated, monopoly cable services.[13] And by eliminating the need for annual rate reviews, price caps will "reduce the

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[11] Cable TV Franchising, No. 317 at 1 (May 13, 1992); see also Mason, AT&T Takes Center Stage at National Cable TV Convention, Telephony at 6 (May 11, 1992) ("TCI claims it is now the largest single buyer of fiber optic cable in the world"); supra p. 2.

[12] LEC Price Cap Order, 5 FCC Rcd at 6790. Although cable operators often claim that rising programming costs are to blame for increasing cable rates, even if true this does not weigh against applying price caps. On the contrary, if cable operators can demonstrate that their costs to obtain programming are beyond their control and are not included in the price cap index, they could seek exogenous treatment for these cost increases. The standard for obtaining exogenous treatment should be the same for cable companies and telephone companies. See Treatment of LEC Tariffs Implementing Stmt. of Fin. Acct. Standards, "Employers Acct. for Postretirement Benefits Other Than Pensions", CC Dkt 92-101, Mem. Op. and Order at 4 (released Jan. 22, 1992).

[13] LEC Price Cap Order at 6791.

administrative burdens on subscribers, cable operators, franchising authorities, and the Commission."[14]

Before imposing price caps, however, the Commission must first "ensure [that] the rates for the basic service tier are reasonable."[15] Unlike telephone companies that have been subject to ongoing rate regulation, cable rates have been completely unregulated in all but a few communities since the 1984 Cable Act. Congress found that cable operators have abused their unregulated monopolies by "unreasonably rais[ing] the rates they charge consumers,"[16] and directed the Commission to protect consumers from rates that exceed those that would be charged if cable "were subject to effective competition."[17] In defiance of the Commission's statutory mandate, however, cable operators all across the country are racing to impose 11th hour increases on top of their already high cable rates.[18]

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[14] 47 U.S.C. § 543(b)(2)(A).

[15] 47 U.S.C. § 543(b)(1).

[16] House Report at 79.

[17] 47 U.S.C. § 543(b)(1).

[18] See "Upward Trend Indicated By Latest Check of Cable Rate Increases," Communications Daily at 1-2 (Dec. 30, 1992); Robichaux, "Cable Concerns Are Scrambling To Raise Rates," The Wall Street Journal at B1 (Dec. 14, 1992); Fahri, "Rates For Cable TV Rise In Advance Of Limit Law," The Washington Post at A18 (Dec. 7, 1992).

Under these circumstances, the Commission can best comply with Congress's directive by establishing, as an initial step, a competitive benchmark against which to judge cable rates.[19] If a cable operator's rates fall below the benchmark, they could be presumed reasonable and, absent a contrary showing, price caps imposed.[20] This would give consumers the benefit of rates simulating a competitive level, and would ease the burden on the Commission and local franchise authorities in establishing reasonable rates.[21]

Where a cable operator's rates exceed the competitive benchmark, the Commission's rules should require

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[19] See NPRM at 26. As the Commission recognizes, the Act "requires that regulations governing rates for cable service be based on ... the rates charged by cable systems subject to effective competition." Id. at 5.

[20] The Commission has previously collected information of the type that would allow it to establish a benchmark comprised of the average per channel rate charged by cable operators that are subject to effective competition. See Competition, Rate Deregulation and the Commission's Policies Relating To Cable TV Service, MM Dkt 89-600, Report at 52-53, App. H-2 (released July 31, 1990). The Commission is also required by the 1992 Act to update this information and report its results annually. 47 U.S.C. § 543 (k)(1).

[21] In contrast, using a benchmark based on an average of the rates currently charged by all cable operators, see NPRM at 28, would flout Congressional intent by perpetuating cable's existing monopoly profits. In addition, a benchmark based on rates that were in effect prior to deregulation, see NPRM at 27-28, would not account for any economies of scale or cost savings achieved by cable operators since that time, whether the result of increased penetration or the deployment of more efficient technologies.

that the rates be justified through a cost-of-service showing.[22] Under the statute, a cable operator must show that its rates are based on its direct costs, an appropriate allocation of indirect and administrative expenses, and a reasonable profit.[23] If a cable operator's rates exceed this level, they should be declared unreasonable and set at reasonable levels before imposing price caps.

3. The Commission Should Also Apply Price Caps To Rates For Cable Programming Services Above The Basic Tier

Congress also found that cable operators have "unreasonably raised" their rates for cable programming services, and that some of these rate increases have been "egregious."[24] As a result, the Commission is directed to adopt "criteria for identifying, in individual cases," rates for cable programming services above the basic tier that are

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[22] See NPRM at 3 ("cost-of-service regulation on an individual system basis could be applied to cable systems seeking to justify a rate above the benchmark").

[23] 47 U.S.C. § 543(b)(2)(C); see also House Report at 82 (the Act "requires the FCC to establish a formula for the maximum price for the basic service tier....[which] must take into account the direct costs of...the basic tier and the portion of the properly allocated joint common costs...").

[24] House Report at 86.

"unreasonable,"[25] and to establish procedures for resolving complaints challenging such rates.[26]

As the Commission has proposed, its regulatory scheme for non-basic cable programming should parallel its regulations for the basic tier.[27] Specifically, the Commission should establish competitive benchmarks against which a cable operator's programming rates, in the first instance, should be measured.[28] If a cable operator's rates are above the benchmark, it should be required to justify its rates based on a cost-of-service showing.[29] Where the rates are not justified, they must be set at reasonable levels and refunds ordered.[30]

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[25] Id. at 86.

[26] 47 U.S.C. § 543(c)(1)(A). Under the Act, these complaints must be filed with, and resolved by, the Commission, id., and Congress urged the Commission to adopt procedural rules to "simplify the process" for consumers, see Conf. Report at 64. The statute does not, however, permit the Commission to delegate authority to local regulators to pre-screen the complaints to select those that should be heard by the Commission. See NPRM at 52.

[27] See NPRM at 47-48.

[28] Among the factors that the Commission must consider are "the rates for cable systems ... that are subject to effective competition." 47 U.S.C. § 543 (c)(2)(B).

[29] 47 U.S.C. § 543(c)(2)(E) (the costs to be considered include the "capital and operating costs of the cable system, including the...costs of the customer service provided").

[30] 47 U.S.C. § 543 (c)(1)(C).

In addition, for those rates that are determined not to be unreasonable, the Commission should impose price cap regulations which parallel those that apply to the basic tier. Applying price caps to cable's higher tiers will provide the same benefits as for the basic tier, and will reduce the administrative burden on the Commission.[31] It will also help to prevent cable operators from evading rate regulation by retiering and jacking up the rates charged for the higher tiers.[32]

4. The Commission Should Regulate Cable Equipment Prices In A Manner Consistent with Its Regulation of Telephone Equipment

The Act also requires the Commission to adopt rules providing "standards to establish, on the basis of actual cost," the rates charged by cable operators for the "installation and lease of equipment used by subscribers to receive the basic tier."[33]

The Commission should implement this requirement by applying to cable the same rules that already apply to

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[31] See supra pp. 5-6.

[32] 47 U.S.C. § 543(h) ("the Commission shall, by regulation...prevent evasions, including evasions that result from retiering, of the requirements of this section...").

[33] The equipment covered by this requirement includes converter boxes, remote controls, and "internal wiring of private homes and for multiple dwelling units." House Report at 83.

telephone CPE and inside wire. Specifically, cable operators should be required to provide this equipment on an unbundled, competitive basis. This will promote the development of a competitive market for cable equipment, and provide consumers with the benefits of competition including greater choice and competitive prices. It will also promote the development of more compatible, standardized equipment.[34]

5. The Commission Must Also Regulate Cable Companies' Provision of Telephone Services

In addition to the regulation of cable services required by the 1992 Act, the Commission is also required by the Communications Act to regulate cable's provision of interstate telephone services.

Under the Communications Act, all providers of interstate common carrier communications services must file schedules of charges with the Commission,[35] and may not

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[34] Because different cable systems use a variety of different types of customer equipment, cable operators should also be subject to network disclosure requirements of the type that already apply to telephone companies. See Furnishing of Customer Premises Equipment, etc., 2 FCC Rcd 143, 148-51 (1987), on recon., 3 FCC Rcd 22 (1987), aff'd, Illinois Bell Tel. Co. v. FCC, 883 F.2d 104 (D.C. Cir. 1989). This will ensure that consumers and competing equipment providers have the information needed to select equipment that is compatible with individual cable systems.

[35] 47 U.S.C. § 203(a) ("[n]o carrier...shall engage or participate in such communications unless schedules have been filed and published").

unreasonably discriminate among customers in charges for like communications services.[36] Even though cable companies are providing such services, they have failed to file with the Commission the schedules of charges required by the Act, and have been free to charge different prices to different customers, and to the same customer at different times, for similar services.

As a result, cable companies providing interstate communications services are doing so unlawfully, to the disadvantage of telephone companies which have been required to comply with the Act.[37] These cable companies should be brought into compliance by requiring them to file tariffs and related cost justifications on the same basis as competing telephone companies.

6. The Commission Must Also Adopt Cost Allocation and Other Rules That Are Similar To Those That Apply To Telephone Companies

In order to effectively implement its new rate regulations, the Commission must also adopt uniform

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[36] 47 U.S.C. § 202(a).

[37] Cable companies' unlawful actions are not excused by the Commission's forbearance policy. Under the D.C. Circuit's recent ruling in American Tel. & Tel. Co. v. FCC, 978 F.2d 727, 735-36 (D.C. Cir. 1992), all providers of telephone services -- whether dominant or not -- must file tariffs with the Commission.

accounting, cost allocation and other rules that parallel those that apply to telephone companies.

First, the Commission should require cable operators to follow a uniform accounting system.[38] Absent such a requirement, cable companies will be free to take widely differing approaches to accounting for the costs of their systems. This would handicap the Commission and local regulators in their efforts to ensure cable's compliance with regulatory requirements, and to coordinate their regulations of cable's various services.[39]

Second, the Commission should impose rules governing the identification and allocation of joint and common costs that are similar to those it has established for telephone companies.[40] The Act specifically requires the Commission to establish rules governing the allocation of joint and common

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[38] As is true for telephone companies, these rules should be based on Generally Accepted Accounting Principles ("GAAP"). See 47 C.F.R. § 32.1, et seq.

[39] In addition, cable operators are also required to file "such financial information as may be needed for purposes of administering and enforcing" the regulations adopted by the Commission. 47 U.S.C. 543(g). Absent a uniform accounting system, this information is unlikely to be particularly helpful to the Commission or local regulators since it would not be compiled on a consistent basis.

[40] See 47 C.F.R. §§ 64.901(b)(2)-(4).

costs between the various regulated cable services,[41] as well as between these regulated and any unregulated services.[42] The Commission should also establish rules governing the allocation of costs to any telephone services that are provided by a cable operator.[43]

Third, cable should be subject to affiliate transaction rules similar to those the Commission applies to telephone companies.[44] It is particularly important that these rules ensure that cable operators do not evade the Commission's rate regulations by recovering monopoly profits through inflated prices that are paid to unregulated

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[41] E.g., 47 U.S.C. § 543(b)(2)(C)(iii) (rates for the basic tier should include "only such portion of the joint and common costs...[as are] reasonably and properly allocable to the basic tier..."); Conf. Report at 63 ("the basic cable tier should not be required to bear a larger portion of the joint and common costs than would be allocated on a per channel basis").

[42] The Act requires that prices for cable's unregulated services be based on fully allocated costs. E.g., House Report at 83 (the Act "requires a 'fully allocated' costing methodology across all cable services;" regulated services "cannot be permitted to serve as the base that allows for marginal pricing of unregulated services"); Conf. Report at 63 ("[t]he regulated, basic tier must not be permitted to serve as the base that allows for marginal cost pricing of unregulated services").

[43] The cost allocation rules that apply to cable operators that provide competing telephone services should be the same as those that the Commission ultimately applies to telephone companies providing video transport services in competition with cable.

[44] 47 C.F.R. §§ 32.27, 64.902.

programming affiliates.[45] Congress found that cable operators have used their vertical integration into programming as a means of impeding competition and ultimately increasing prices to consumers.[46] Cable operators, therefore, should bear a heavy burden of justifying any increased programming costs paid to an affiliate.

Fourth, cable operators should also be subject to an annual attestation audit.[47] This will provide independent verification to ensure that cable operators comply with the cost allocation and affiliate transaction rules prescribed by the Commission.

Fifth, cable operators should be subject to the same depreciation rules as telephone companies. Because cable and telephone companies are deploying the same technologies, there is no basis for distinguishing between the depreciation rules that apply to the two industries.[48] Moreover, if cable companies were permitted to depreciate assets more quickly than telephone companies, they would retain an unfair advantage in those areas where the industries compete.

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[45] See supra n. 32.

[46] 1992 Act, § 2(a)(5).

[47] See 47 C.F.R. § 64.904.

[48] See supra pp. 2, 5.

As the Commission itself has recognized, the depreciation rules that currently apply to telephone companies are outmoded, and should be simplified.[49] Moreover, telephone companies should be permitted to institute capital recovery programs that depreciate their existing plant at a rate that matches its economic life. Whatever depreciation rules are applied to telephone companies, however, should apply equally to cable operators.

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[49] See Simplification of the Depreciation Prescription Process, CC Dkt No. 92-296, NPRM at 4 (released Dec. 29, 1992).

CONCLUSION

The Commission should create a measure of regulatory parity between the cable and telephone industries by applying to cable companies -- in both their cable and telephone operations -- regulations that parallel those that apply to local telephone companies.

Respectfully submitted,

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